IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.170 OF 2000.

M/s.Star Builders & ors. : Appellants.

versus

The Bank of Maharashtra : Respondent.

Mr.Anil L. Desai for the appellants.

None for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 7th February 2005.

ORAL ORDER

1. Heard advocate for the appellants. Nobody is present for the respondent. The suit of the respondent/Bank was decreed against the appellants/defendants and hence this appeal.

2. It is the contention of the appellants that Air-India Employees Ashirwad Sadan Co-operative Housing Society Ltd. was the necessary party because the loan was taken by them and not by the appellants. He also

contended that for the work done by the appellants the said society had given three cheques. Those cheques were deposited with the bank and, if those cheques were dishonoured, the bank should have returned those cheques to the appellants, but the bank retained those cheques. This, according to counsel for the appellants, was the material aspect of the matter, supporting the contention raised by the appellants. He also fairly conceded that the appellants could have moved an application for joining the said society as party and could have summoned necessary witnesses to prove the defence, but since that has not been done and since the said society is not being the party, the matter requires to be remanded to enable the defendants to prove their contentions and defence. He also contended that there are many documents execution of which before the branch manager is not proved. Therefore, according to him, all these issues require fresh evidence with opportunity to both the parties to prove their respective contentions. In view of this, I pass the following order :-

:ORDER:

The impugned order is set aside i.e. the judgment and decree against the appellants is set aside.

Matter is remanded to the lower Court for decision according to law. The Court below will give full opportunity to the appellants to take necessary steps with reference to above discussion.

Both the parties will lead their evidence and file their amended replies and pleadings.

The Court below will frame the issues and after recording the evidence will decide the matter according to law within a period of eight months from the date of receipt of this order by the Court.

Parties to appear before the Court below on 1st March 2004. Both parties will not ask for unnecessary adjournments.

Certified copy expedited.

[D.G.DESHPANDE]

07/02/2005 JUDGE.